UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION

Case No. 12-md-02311

MDL NO. 2311

Hon. Marianne O. Battani

_____/

STATUS CONFERENCE

BEFORE THE HONORABLE MARIANNE O. BATTANI
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Friday, June 15, 2012

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Also present: Mark Werling
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Detroit, Michigan

Friday, June 15, 2012

at about 10:00 a.m.

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(Court and Counsel present.)

THE CASE MANAGER: All rise.

The United States District Court for the Eastern District of Michigan is now in session, the Honorable Marianne O. Battani presiding.

All those having business before this Honorable Court, please draw near and you shall be heard. God save these United States and this Honorable Court.

You may be seated.

Court calls Automotive Parts Antitrust Litigation.

THE COURT: Good morning.

ATTORNEYS PRESENT: (Collectively) Good morning, Your Honor.

THE COURT: Gee, there are a lot of you here. I didn't realize that so many of you would come. Okay.

All right. I'm very anxious for this meeting because I want to find out what is going on, and, of course, we just had a recent transfer order which you may have heard about from the MDL, and actually that's the first thing on the agenda.

I would like to follow the same protocol that we

did last time; if you are going to speak if you would please approach the podium and give your name, so nobody say anything without identifying themselves. All right.

First of all, the transfer order, that came kind of as a surprise to me when Judge Heyburn called and said there wouldn't be other MDLs and how did I feel about that. To be honest, I had never considered that they would be consolidated without being the separate MDLs, but he told me would I do that, that's what they had determined, and I said okay, fine, and so here we are.

And I think we need to talk about how we are including these new parts into our MDL, how we are going to organize the docket, the file, to reflect these parts. What happens with the complaint, how do we -- do we need another amended complaint, do we have a separate complaint, do we somehow consolidate them? I mean, they are all issues that I don't have answers to, and I was very anxious for you, and I am so happy that they came down with this order before this meeting because, you know, as I said, I wouldn't have imagined that it would be such a big part of this but, of course, it is now.

I do want to say one other thing while we are having -- before we get into this general discussion, there is -- there are three other cases that were just filed that I have -- two of them that I have accepted, one was before

Judge Roberts -- Eric, was that the seat belt -- well, and Judge Steeh. One was seat belts and I don't remember what the other one was. And then -- and they had some of the same defendants, and so I am going to accept those and put them into the MDL as tagalongs.

There is one case that -- there is one case, the -- let me see, that Judge Zatkoff has, and I think that's the wheel bearing case. I talked to Judge Zatkoff about that and came to the understanding that he felt and therefore I agreed, but I will tell you why, that there were different defendants in that case totally from the case MDL 2311, but it is an auto part and as I read the order from the transfer order it almost sounds like all of our auto parts, and believe me, I have no clue -- oh, I do have a clue as to how many auto parts because I had another case totally unrelated to this, it was on a purchase order, and had to do with an auto part, and so I asked them just as an aside, and the attorneys, of course, did not know why I was asking, I said how many auto parts are there? He said oh, 12,000 to 15,000. With all due respect to the defendants, I don't anticipate that too many more are involved, I don't know.

But anyway, as to the wheel bearing case that Judge Steeh has -- excuse me, Judge Zatkoff has, he is keeping that. Now, I am doing nothing about that. If anybody wants to change it or have it as a tagalong then

there are processes that you could take to do that. I mean, the more I think about this and I guess as you come up and comment I would like your comment, and please understand that I am just talking because I want to find out more information about this but I'm always looking to the end for the settlement, I mean, I know we have a long way to go and I'm not saying that you are all going to settle so please don't think that I am saying that you need to, but in the end when we get there I want to know -- I mean, the plaintiffs have to be the same basically, the classes, so if you purchase a car, I mean, aren't we going to resolve this with one, you know, each purchaser is going to get something or are they going to get something for a car harness, something for a safety seat, something for a fuel sender? I mean, it becomes somewhat overwhelming so ultimately -- and, you know, I did discuss this with Judge Zatkoff that ultimately I think the cases are going to come together one way or another, so I just want you to know that is the status right now. If anybody in the wheel bearing case wants to change any status then you are going to have to go through the panel.

Just with those comments, can I have some comments? Mr. Fink?

MR. FINK: Your Honor, David Fink.

To speak to the initial question that the Court is asking really about organization, there have been a lot of

discussions among the counsel for the parties. We have a general consensus, there may be dissent which we'll hear but I don't think so, we have a general consensus that the logical way to go forward is essentially as follows: One, of course, it is determined that this is a single MDL and that it is master file 2311, but within that MDL it makes sense to break this down into subparts by product so that, for example, you might have a 2311-WH for wire harness, IPC for instrument panel clusters, et cetera.

THE COURT: Can I just stop you there because there is another thing I want you to talk about? We amongst ourselves here in court had thought before -- well, actually, as naive as we were we were starting out with 2311 as being the umbrella and then having all the separate MDLs under it, but that's all scratched. Then we were talking about doing exactly what you were saying, adding a letter or two to the case number so that we can identify the part, but I want you to think about this, is it the part we need to identify and, if so, do we also need to identify within the part anything chronologically?

You are going to wonder what am I talking about. In other words, we have -- if we do it by part that may resolve it because, you know, we have these new parts that have just come in now and some of you have already been served and you've got your dates and everything and your

conference, so I want to know how do we keep track of the schedule, do we do it by group, do we do it by part, do we do it by all of those filed this month, I mean, how do we group them?

I think what you are saying is you would like to group them by part and that might take care of this whole issue of dates because wire harnesses basically are all pretty well filed, is that --

MR. FINK: Yes, Your Honor. By separating them by part you essentially have a group of -- well, saying it was under an umbrella wasn't really inaccurate because you really have a group of MDLs that are under one umbrella but that umbrella -- and if you think of it in terms of ECF filing it becomes a little clearer both what we need to do and what the problems arise if we don't, and that is there is -- there will be defendants who are in one, two or three of the auto parts cases and not in others, they don't need to or want to get all of the pleadings, filings and court notices related to the part they are not involved in. So by breaking them up this way through the ECF system everybody that's involved in any one of the individual auto parts gets all of their notices, gets all the information related to that, but they don't have the overlap of the other information which would be overwhelming both for the Court and for the parties.

Now, the Court could use the 2311 number and send a

notice of some kind, I suppose, but my best guess is it is easier for the Court to just send out -- instead of setting the ECF up that way it is probably still easier just to send notices to each of the -- identical notices if necessary to each of the subcategories, whether it is the WH, IPC.

Now, there is one complication but this is with ECF folks, and that currently the way that the docket -- that the codes are structured, the letters that come after the numbers represent the judges so if, for example, we had an auto part that was MOB that would be pretty complicated since right now that's the Judge's initials that follow the 2311, but that's obviously something that can be dealt with.

So, Your Honor, to start with, as I started to say, we break it up by part, and the next issue though is, as applies in all of these cases, you also want to have a subcategory that breaks it up by the plaintiff category. So in this case, for example, you've got the direct -- all the direct purchaser plaintiffs, the end-payor actions and the auto dealer actions, and literally as the way if the Court wanted to picture a caption the way the caption would read is it would be In Re: Automobile Parts Antitrust Litigation, and then below that this document relates to, and under that you would first identify the auto part that it applies to, and then under that you would indicate the track that it applies to; all direct purchaser actions, all end-payor

actions or perhaps all matters. And that would be pretty consistent with the way that these cases are handled with the oddity that they are all under this 2311 number.

Now the Court had asked a question about multiple complaints and things like that, and then that's really not an issue anymore because each one follows -- will follow its scheduling track also.

THE COURT: Well, let me give you this example. The new auto part, say the instrument cluster -- the panel, that's not in your consolidated complaint obviously, or the fuel sender or, you know, whatever, so how is that to be handled? How would you suggest in terms of another amended complaint, another complaint? I don't know.

MR. FINK: There would be a separate case management order presumably, we haven't discussed this among ourselves, yeah, but there would be separate complaints, but the answer to the broader question that I thought the Court was asking was managing that and other issues, and presumably there will be a separate case management order that sets things like the filing of a consolidated amended complaint and then the complaint that's filed in wire harness really is not involved in any way in the complaint that is filed in -- I mean, the consolidated amended complaint that ends up being filed with the IPC case.

Now, Your Honor, there is --

THE COURT: Okay. We'll have to work this out because we have one case number, we have the 2311, and we are going to have multiple complaints under 2311. It's not impossible. I'm thinking of CM/ECF and how we manage it without throwing the system totally crazy. I will tell you that we have a meeting next week with a person who has the most expertise working on the Dow case in here, the clerk who did all of that computer stuff, so we will see what we can do, but the multiple complaints are going to be interesting.

MR. FINK: If the Court would like the participation of representatives of each of the groups I'm certain that we would be happy to participate in that meeting if that would be appropriate or helpful. Perhaps it is unnecessary.

There are other attorneys here who may want to speak to this, and in particular --

THE COURT: I will give them an opportunity, yeah, no problem. And I don't know yet, I'm going to meet with her with my staff, and if we find we should get a couple of you, you know, or just liaison, again, I don't want to get all of you in here, this is just a technology issue and so it may be that we will be coming to you for some assistance before we do the final decision as to how it is handled now that we know what the format -- now that we know what the MDL is doing.

MR. FINK: Well, Your Honor --

THE COURT: Because it is important to do that now because otherwise we are going to be messed up for the next how many years.

MR. FINK: Absolutely, Your Honor, and I do want to say that with the questions that the Court posed, while it may start as a technology issue it could create a lot of problems and complications in the pleadings, et cetera.

THE COURT: Okay.

MR. FINK: Now, I know that the indirect -- I'm sorry, the end-payor purchase plaintiffs currently have among the counsel who are representing them someone who may be able to offer some additional perspective, it is Judge Frank Damrell, who is -- he's not here as a judge, of course, but he's recently retired from the Federal bench, and I think he may want to speak to this. I don't mean to go out of turn, I just wanted to be sure that the Court was aware --

THE COURT: Well, we will but let's take this gentleman here first, and then we will get to you, sir.

MR. TUBACK: Good morning, Your Honor. Michael Tuback on behalf of Leoni, speaking at least for this issue on behalf of the defendants.

We feel very strongly, Your Honor, that this case, the wiring harness case, needs to be treated as a separate case for purposes of the complaint and how it is going to

function than these other cases. There are a number of us in this case, Leoni, my client is one of them, who have nothing to do with fuel senders, they have nothing to do with seat belts, they have nothing to do with anything else, and so we -- and there should not be a new consolidated complaint. The complaints that are currently on file here are the ones that will be tested in the motions to dismiss, and whatever else happens in those other cases shouldn't effect the complaints that are currently on file.

Now, the MDL panel --

THE COURT: Well, the complaints currently on file some of them have other car parts in them.

MR. TUBACK: The consolidated amended complaints that are filed in these three actions --

THE COURT: Just the wire harness?

MR. TUBACK: Yeah, just the wiring harnesses, and we would not want to see them case weighed or lag or somehow be pulled in with all of these other car parts, and I think that's why the MDL panel, when it sent in its transfer order, and this is a common language the court uses, the MDL court uses, is that the cases are transferred for coordination or consolidation. In this case we think coordination is the much better way to go. Consolidation is going to result in an unholy mess, if we were to have one complaint it would certainly be unworkable, and so I think we are going to want

to treat them --

THE COURT: I think you're right.

MR. TUBACK: -- separately.

MR. BECNEL: May it please the Court, I would like to speak after --

THE COURT: Yes.

MR. DAMRELL: Your Honor, my name is Frank Damrell. I haven't addressed a court on this side of the bench in about 17 years, so I'm very happy there are so many brilliant counsel here behind me because I so need their help, I have always needed that whether before and after I became a judge.

I also have had the privilege of serving on the MDL panel, and I would comment about the order. I mean, the first item on the agenda here is the MDL order, and this is a very detailed order that you seldom see on a transfer such as this but this is a complicated case but I think Judge Heyburn's words kind of lay out the road map that I think that, Your Honor, you have already indicated in some respects how you want to proceed with respect to separate tracks perhaps, and obviously that's enhanced by the fact that you have now several cases that will have separate tracks in addition to the wire harness.

I don't want to echo the comments that were just made with respect to the wire harness case. It is my understanding there has been a number of agreements reached

with respect to the discovery plan, motion schedule and such in the -- as I understand how these cases oftentimes work, you do have a case such as this where you have the wire harness case that was filed first and has moved down the track some ways, and it becomes a template oftentimes for the following cases. You have here the same attorneys, the same parties in many of these cases, and they have already reached agreement, and those agreements could be applicable obviously to other cases that follow, which is a big benefit to the Court and clearly streamlines some of the proceedings that otherwise would have to start from scratch.

So I would underscore the notion that in particular the order itself from the panel, the words from Judge Heyburn were similar conspiracies are alleged involving overlapping defendants and stemming from the same Government investigation, and the parties and counsel already overlap to such a large extent, we find the creation of a single MDL presents less of a concern that they raised earlier. So that even though we have a single number you have multiple tracks that follow on different other products, and with respect to those products I think it is important that I wasn't clear about the Court's comment but I understand that there is another judge that may be keeping another automotive product case. It seems to me, Your Honor, just --

THE COURT: Excuse me, Counsel. Are you on the

wheel bearing case? You kind of shook your head. Counsel here at the end.

MR. IWREY: No, Your Honor, I have it but --

THE COURT: Oh, you have the complaint. Okay. All right. I was just wondering if we had some inside information here.

MR. DAMRELL: It is so incurious because we do have an order from the panel that refers to the same investigation, the same Grand Jury investigation, and I think that historically those cases that arise from the same investigation generally are maintained in the same -- before the same transferee judge for obvious reasons. Now, I'm not suggesting that you can't do otherwise, it is up to you. The nice part about this is you have complete freedom to do exactly how you want to handle this, and that's important.

THE COURT: That's the difference from this side of the bench and that side of the bench.

MR. DAMRELL: Exactly, and I'm struggling with that, believe me.

But I think if this bearing case is part of the same investigation, given the discovery issues involved it would probably make sense to have the same judge -- the transferee judge handle that case, and I think that's what's contemplated in Judge Heyburn's order.

THE COURT: I agree with you. Once I got this

order it was relatively clear to me, and maybe as a former member of the panel you are telling me that if it went to the panel it would become part of this case?

MR. DAMRELL: Correct. As I say, this order is -- I would say of the many orders I have seen this is very detailed, and obviously the panel places great confidence in you and they place great confidence in your ability to put this together, which is going to be -- it is not going to be easy but it is not reinventing the wheel either, and I think that the notion of tracks separate and apart, and I am not going to get into the details, but separate and apart and having the harness case -- the wire harness case probably provides a template for you to proceed, as prior counsel has indicated, that goes along its own track, as it were, but provides a template and a way for you to deal with other cases because those same lawyers are going to be appearing before you in those other cases and it is makes sense that those agreements if they should be applied should obviously be applied to the other cases and products.

THE COURT: All right. So from what I'm hearing so far there is some agreement that every part be like a track, have its own -- I'm not going to say case number, I don't know how that is going to work technically but we will have -- each part will have its own case basically but we have the same attorneys on each part?

MR. DAMRELL: Right.

THE COURT: Okay. Thank you.

MR. DAMRELL: Nothing further. Thank you, Your Honor.

THE COURT: Thank you. Yes, sir?

MR. BECNEL: May it please the Court, Daniel Becnel.

Bernie, with Labaton, and I appeared before the panel to argue this case, and as you recall the last time we were here when you were appointing lead counsel we said there's some more things in the pipeline, we don't know whether they are going to give them to you or they are going to want to split them off, but when we appeared before the panel the first thing they said we don't want you to argue where this case is going to go, argue if you have anything to say why Judge Battani shouldn't have these cases, and we both agreed they should come here.

And the only issue you have to deal with now is -- and there are going to be some more in the pipeline. You have the general number, and how you separate them is up to you.

There's only two or three big cases that I can recall where you've had this kind of complicated problem where if they were all the same manufacturers or they were all in the same associations, such as pedicle screws where

you had many manufacturers of pedicle screws, or breast implants where you had many manufacturers but they were all different, you know, it was Bristol Myers, it had Dow, it was this one and that one.

The Chinese drywall is the most incredible one of all, which I was in yesterday, we have a thousand defendants. So what the judge did then is said look, each of you appoint who you want and I will give an impromptu to who you appoint to be lead counsel for the home builders or lead counsel for the distributors or lead counsel for the manufacturers, et cetera, because a lot of them had claims and cross claims against each other, it is not me, it is the man behind the tree that is responsible.

So I think we are in total agreement the leadership you have appointed is fine. We don't know whether the defendants are in total agreement, whether let's say a Swedish company wants to be in the same boat with the Japanese company. That's what you have to determine based upon their recommendations to you and then you make the call for balls and strikes. The only issue with the other cases is this leadership is fine, we are all working together, I don't think we have a problem, the issue is who do you want to be responsible for the two new cases? Should you say you guys get together and make this guy responsible or that lady responsible or this person responsible, or do I have to

appoint somebody so I have somebody to look to to answer the questions that I'm going to want answered in that particular component?

THE COURT: Okay.

MR. BECNEL: But I think you are going to have some more coming to you also so this is probably not the caboose yet. Thank you, Your Honor.

THE COURT: But not 14,000, right?

MR. BECNEL: I hope not.

THE COURT: Okay. Well, when we first met and we appointed lead counsel -- interim lead counsel, liaison, et cetera, of course we didn't know these wouldn't be separate -- the future ones would not be separate MDLs, but right now, and I guess I would like some lead counsel to approach the podium because I really don't intend to have more counsel, I mean, this is just going to be too much. I want to know can lead counsel handle other car parts? Somebody want to speak?

MR. KANNER: Good morning, Your Honor. Steve Kanner on behalf of direct plaintiffs.

On March 15th we appeared before Your Honor for the first time. At that time in connection with our groups, the organizational efforts with respect to the wire harness case and incidentally our petition for lead counsel, we made a pledge at that time. I think we have upheld that pledge.

That pledge was to work cooperatively with the direct purchasers, the dealer classes and the indirect purchaser or the end-payor classes to coordinate our efforts with defendants and to promote the efficient prosecution of the case. I think we have done that so far with wire harness. I think the comments that were made earlier about using this case, its organizational efforts as a template, are well taken.

To directly answer your question, I would like to provide some examples why I believe we can continue to efficiently run these additional cases. To date plaintiffs and defendants, as you well know, have had a number of meet and confers both in person and telephonically which resulted in I'm counting about six separate items.

Number one, we have completed a formal ESI stipulation. Number two, we have completed a stipulation on expert materials. Number three, we have coordinated successfully a briefing schedule for defendants' motions to dismiss, which, I believe, the first are to be filed in mid July and those, of course, relate to the defendants who have been served. Number four, we established a schedule for the production of Grand Jury materials by those defendants who have entered guilty pleas. I believe that production begins sooner than might be in other cases, that would be August 1st. It is scheduled to complete -- to be completed

by October. Fifth, we have agreed in principle to the production by defendants of their transactional data, critical, of course. Sixth, we have agreed on all but two items, which are later on down the laundry list for today on the discovery.

THE COURT: I have read them.

MR. KANNER: But I have to tell you, from my experience in a number of these cases that's remarkable progress. We have done so with a high degree of civility, collegiality and cooperativeness both with the plaintiffs' classes, and I have been in many cases where the subclasses of plaintiffs or the various groups don't have a good working relationship, and certainly I think it stands as a testimony to our collective experience in the bar that we have been working well, all those zealously with different sides, with our colleagues on the defense bar who have demonstrated a high degree of cooperativeness with us, so that's a positive.

THE COURT: Let me ask, what is your -- as lead counsel now, your relationship with counsel who filed say a wire harness case but is not lead counsel? How does that stand? I just don't know. I have no idea how these counsel who file a case and yet now they are not counsel on the case.

MR. KANNER: Well, when I first spoke to Your Honor back in March I talked about how we had already created very distinct assignment groups.

THE COURT: Right.

MR. KANNER: Those assignments have been given to various attorneys in the plaintiffs' counsel group, which is over 20 firms at this point. We are not duplicating our work.

THE COURT: So they are assisting, they are doing their work separate?

MR. KANNER: Absolutely.

THE COURT: As I told you in the beginning, I'm concerned about fees and I know the fees are going to be enormous, but I want to make sure there isn't a duplication yet I want the other attorneys involved.

MR. KANNER: There isn't, Your Honor. In fact, we have made it quite clear with correspondence to all of the plaintiffs' firms working in the case that no efforts in this case, no work that anyone does in this case should be done -- no time will be accepted on that unless it is through a specific assignment by lead counsel.

We have established a time reporting mechanism. By the end of every month all counsel must submit their time broken down in detail with backup to one of the firms in which to maintain on an Excel spreadsheet, and firms can't go back two months to add time. We have been through this before and we understand that certain mechanisms have to be in place to ensure accuracy of time and to ensure that work

is done per assignment and not on a willy-nilly basis.

THE COURT: And I trust that. I think you should all know, both in having these meetings and in working this out, you know, I may have the final decision but I'm looking to you with the experience to direct me in how to make that decision.

MR. KANNER: Your Honor, we always keep in mind the fact that you do have the final authority on that issue.

THE COURT: But I want you to keep in mind that I want you all, because I think it is important, and you have so far worked together so well because of your expertise and that's why you were appointed as you were. So I just want to be sure you're saying to me there is no problem with the additional car parts coming under your group as interim lead counsel?

MR. KANNER: That is exactly what we are saying, Your Honor.

THE COURT: Okay. Very good. Thank you.

MR. KANNER: Thank you.

THE COURT: Anybody else?

MR. DAMRELL: Can I just make one comment?

THE COURT: See, you're deferring to him because he was a judge, that's not fair.

MR. DAMRELL: Your Honor, the question arose regarding leadership, and I think that kind of goes to the

notion of this template that has been referred to. As counsel just indicated, there have been a number of things that have occurred that really have streamlined the procedures, and it seems to me that if you look at the MDL order again itself I think it contemplates that the wire harness case has taken the lead, as it were, and in the sense that you're going to have tracks but you're going to have one number, different products are going to be obviously in separate tracks, but the notion that counsel for the three classes have reached agreement with the defendants, all the defendants in this case, on such key matters, it makes sense that going forward that that same counsel maintain that role because it obviously is going to be something that you are going to be interested in in terms of what is accomplished going forward in the wire harness case and some of the same counsel are going to be representing the plaintiffs in the other classes in the other cases.

Having -- if we were to -- if we were to change that and have different roles for different attorneys and different plaintiffs it seems to me that the efficiencies that are gained by this order is --

THE COURT: I'm not going to change it. You don't have to go on, there is no question about that.

MR. DAMRELL: Okay.

THE COURT: No, no, there's no question. I just

wonder, you know, you're sitting there and all of a sudden your case becomes a little different than what you started with, and I want to make sure everybody is comfortable with that, that's all. I think it is very efficient to have the same attorneys handle everything. I'm just -- I'm just concerned, and maybe I can ask you this about that case that Judge Zatkoff has because I can't take that from him, you understand that, internally. I can't do it but -- I don't know who the attorneys are on that.

Eric, you told me one was --

MR. PERSKY: My name is Bernard Persky of the Labaton Sucharow firm. We are co-lead counsel for the end-payor plaintiffs.

We filed the first auto bearing case, we filed it in the Eastern District as a related matter. It arises from the same exact Government investigation by the FBI out of the Detroit office. And, yes, there are not overlapping defendants but it is the same kind of conspiracy under the same investigation by the Government. In our view it in essence fits within what would normally be called a tagalong case in the view of the MDL's transfer order. The Multi District Litigation Panel, I believe, had in mind that auto parts come your way. We don't expect -- we don't know what beyond the auto bearing cases there are. We know that the safety systems case, which Your Honor has now accepted, has

an overlapping defendant so that's common with defendants in the other cases that you have. As to auto bearings it is our view that the appropriate thing to do is to apply to the Multi District Litigation Panel, not to the judge who currently has it in the Eastern District of Michigan, and persuade the panel that it is a tagalong case that should be before Your Honor, and it will have its own track, its own scheduling, but the same plaintiffs' counsel would be running it on behalf of the various plaintiffs' classes.

So with all due respect, Your Honor, we think it should be here, and we along with whoever else wants to join us will take the steps that are appropriate and necessary to ask the panel to send it to Your Honor.

THE COURT: Good.

MR. PERSKY: Thank you.

THE COURT: Thank you. That settles that issue. All right. Now --

MR. CUNEO: Your Honor --

THE COURT: Oh, I'm sorry.

MR. CUNEO: Jonathan Cuneo, and we are here with some of my colleagues for the auto dealers.

We wanted to identify with the remarks that Mr. Kanner made about his group. Our group is in the process of establishing the same internal controls, and we have been working very well with both the direct purchasers and the end

users. And a measure of that is just this morning a group of them persuaded me and I believe my colleagues that the approach that Mr. Fink outlined to the Court early this morning was acceptable to us. And in that regard we are at least at the current time, as I stand before you, have been conceptualizing this in a different way, which was by defendants as opposed to by part, at least as far as the subsequent filings to wire harness, but we are prepared to retrofit our thinking, file amended complaints, and do it in the way that the Court prefers, and we have no problem with the program that Mr. Fink suggested.

THE COURT: Good, very good. Thank you.

MR. CUNEO: So that is evidence of cooperation right here in your courtroom.

THE COURT: That certainly is. I do want to say to any defendants, I hope you don't mind sitting in the jury box, you know.

MR. FINK: Your Honor, we just want it to be clear, that this is a temp -- they are not going to be in the jury box at the end.

THE COURT: We will see. We will see. Does any defendant have any other statement they want to make about this?

MR. IWREY: Your Honor, Howard Iwrey from Dykema.

THE COURT: Could you come to the podium, please?

MR. IWREY: I'm sorry. Good morning. Howard Iwrey from Dykema on behalf of Lear.

I just wanted to say that Mr. Fink and I had talked about the ECF protocol, and you had mentioned that you're meeting next week. I just wanted to volunteer along with David and other local people to work and coordinate that for the Court if that's what the Court desires.

THE COURT: Okay. You know, I'm not asking to put more work on you, I just want input so we get it right, that's all.

MR. IWREY: We are lined up in terms of the separate identifications of the parts and the separate tracks.

THE COURT: Okay. Let me ask you this, if I -- if I want to have your input, I guess I'm thinking about liaison counsel because you're here, and it seems liaison should do something.

MR. IWREY: No comment.

THE COURT: Would it be all right, like you have so many defendants, I don't need all the defendants to come in on this technology, I really don't want you all, but if you want to volunteer for defendants or, you know, some other defendant thinks they need to be there, I mean, we obviously are not talking at all about the substance of the case, we are only talking about how to do the administrative -- the

technology part to effectuate what we have just talked about, the parts. So if you all agree and I decide, and I don't know yet because I want to meet first to see what they have, I would have liaison counsel for each of the groups and you, sir, for the defendants, and if some other defendant wants to come too really I don't care, but I want this as a small discussion group, that's all.

MR. IWREY: Looking over at the jury box it appears that I have been volunteered for that.

THE COURT: Okay. All right. Very good.

MR. IWREY: Thank you, Your Honor.

THE COURT: I will notify you. I am going to meet next week, and maybe in a week or so have another meeting and then have you come in. I won't finalize anything until I discuss it with all of you so that if there are some other ideas or something we missed, as I said, I want your input. Okay. Very good.

Are there any service issues? I haven't heard anything else that is not taken care of but -- no?

MR. KOHN: May it please the Court, Joseph Kohn, Kohn, Swift & Graf, for the direct purchaser plaintiffs.

With respect to wire harness, we can confirm that all of the 31 entities named, and they do fall under the different defendant groups, have either accepted service, been served, except for two that are in Japan where the

service is underway as part of that process and it has been catching up as we speak. And one of the quirks of that is the defendants' counsel will frequently tell us before the service reports back to us that they have completed the service, they will say, yes, we have now been served in Japan. So we have no reason to believe that won't be completed in the normal course as this briefing proceeds.

THE COURT: Okay. Very good.

There was another item -- well, I guess number 3 on page 2 which had to do with service issues too, so while we are on it, I would like to know the status of the defendants who have been served and when they were served in like one easy table. This is just a simple thing because I want to keep track of these dates. Could you provide me with that?

MR. KOHN: Certainly, Your Honor.

THE COURT: Thank you. Okay. And we all know that we have a new name, it has been referred here to as the Automotive Parts Antitrust Litigation, and I think that also shows the intent of the panel, do you not? I wish I had had this order before I talked to Judge Zatkoff because I think we could have avoided all of this but I didn't so -- all right. As to the second item on the agenda we have taken care of that.

Motions to dismiss. We aren't arguing them today.

MS. FISCHER: No, Your Honor.

THE COURT: July something they will be filed?

MS. FISCHER: July 13th, Your Honor, they will be filed.

Your Honor, we just wanted to discuss sort of logistical issues today on the motions to dismiss. We are obviously trying to limit the amount of paper before the Court so we are attempting to basically draft collective briefs on collective issues, and have made a proposal to plaintiffs' counsel that for collective briefs, opening briefs be 40 pages.

THE COURT: I'm sorry. Could you give your name?

MS. FISCHER: Yes. It is Michelle Fisher on behalf of the Yazaki.

So 40 pages for opening briefs, 40 pages for opposition, and then 15 for replies for collective issues, and then there will be individual defendants who will be briefing their own -- some of their own issues. We made the proposal, we haven't heard back from plaintiffs yet so I don't know if there is dissent on that or not but that's the proposal on the table.

THE COURT: You need 40 pages?

MS. FISCHER: For the collective issues. So, in other words, you won't get from every defendant a Twombly brief or briefs on why the consumer protection claims under Alabama law are deficient or something like that.

In addition, we would propose to handle on the state law claims just not argument but using an index at the back to list the state and then the authority that supports the point made in the brief.

THE COURT: Okay. Let me start from the back of this with the defendants all filing their briefs and they are going to have exhibits, I'm assuming, to the brief. Are there going to -- I don't know how common your exhibits, maybe by having this initial large brief you will have just one group of exhibits.

MS. FISCHER: Well, the indexes or appendixes we are thinking about are really just a list of authority by state.

THE COURT: The authority, okay.

MS. FISCHER: Right, the authority, since they are motions to dismiss --

THE COURT: You won't have anything else?

MS. FISCHER: At least 12(b)(6) motions would not have anything else, jurisdiction issues may be different.

THE COURT: Right. And what are, without -- I don't want to give away any of your strategy, but could you tell me kind of in general what these claims are based on, your motions to dismiss?

MS. FISCHER: Possible subjects would include Twombly, jurisdictional issues, FTAIA is a possibility, state

specific arguments, consumer protection, state antitrust law and unjust enrichment arguments, standing. There is even some specific arguments that some defendants have filed for bankruptcy so they will have bankruptcy --

THE COURT: Well, bankruptcy is another issue, I'm glad, so the individual defendants will bring up the bankruptcy issue, okay, because we have a couple at least who have that issue. Okay.

What else do you need? Now, you are going to be filing them by July 13th?

MS. FISCHER: Correct.

THE COURT: And that would be your group one plus all the individual defendants, so we know we have that.

MS. FISCHER: And just for the sake of clarity, there are three group of plaintiffs so three separate complaints, so we would be talking about collective briefs relating to the different groups.

THE COURT: Okay. And then, as I recall the schedule, there is what, 60 days?

MS. FISCHER: 60 days. I think the oppositions would be due September 11th, if I'm doing my math right, and then the replies would be due October 26th, I believe.

THE COURT: Okay. And then I always have argument on my dispositive motions, I have never dealt with all of this many people though, but I still think I would like to

have argument on the motions, so we will have to come up with a date. I don't know yet because I need time to look for a clerk and myself because I always read them to go through all of the motions first before I have you come in for argument, so I am really not sure if we are talking about the middle of October.

MS. FISCHER: Well, the replies would be filed late October.

THE COURT: Late October. I don't know if we would have argument in December maybe or possibly even early January. Okay.

Anything else on the motions?

MR. HANSEL: May it please the Court, Your Honor, Greg Hansel for the direct purchaser plaintiffs.

We have had discussions with Ms. Fischer attempting to reach agreement on the page limits that the defendants have requested, and we agree that it makes sense for the defendants who have a common -- who have common issues to combine those into a single brief to make it more streamlined for the Court and promote judicial economy, fewer opposition briefs, fewer reply briefs, that all makes sense. The 40-page limit the defendants have requested seems reasonable for a consolidated motion to dismiss brief and for the plaintiffs' responses.

However, we believe that the separate individual

supplemental motions to dismiss should be shorter --

THE COURT: I agree.

MR. HANSEL: -- than the 20 pages, which is the default page limit, simply because if you didn't do that you wouldn't actually be achieving efficiencies, you would have the maximum page limit for every defendant plus 40 pages, so if we are actually trying to streamline this then those ought to be somewhat shorter.

The plaintiffs would respectfully suggest 10 pages for the initial separate briefs, 10 pages for responses and 5 pages for replies. Thank you, Your Honor.

MR. MAROVITZ: Good morning, Your Honor. Andy Marovitz on behalf of Lear.

We are one of the defendants that will be filing a separate brief, and for us it is not a supplemental brief. Lear is one of the defendants that filed for bankruptcy. Lear is one of the defendants who is not involved in any one of the other cases and we have our own issues.

In addition, the rules are not necessarily one size fits all for all cases. There are some cases like this one that present a myriad of issues where parties may need more than the usual number of briefs, so respectfully we agree with all the other defendants that we are going to do our very best and all the other defendants are going to do their very best not to give you more paper than you need. That's

not in anybody interest, it is certainly not in ours. But in order to provide you with a full picture of what, at least for Lear we intend to show why we should be dismissed from this case, and also from any of the other defendants too who are filing more than simple me-too briefs, we really do need 20 pages for our opening brief, we would allow 20 pages for the plaintiffs, and we need 15 pages in reply. This is a big case and to --

THE COURT: I'm getting scared, everybody says it is a big case, it is making me nervous.

MR. MAROVITZ: But to limit us to 10 pages and then 5 will effectively eliminate our ability to apprise the Court of why we should be dismissed.

THE COURT: All right. Here is what I'm going to do --

MR. PERSKY: May I comment on that, Your Honor?

THE COURT: We'll take one more comment but that's it because I already know what I'm going to do, so go ahead.

MR. PERSKY: This is Bernard Persky of the Labaton Sucharow firm for the end payors.

I just wanted to bring the Court up to date about the Lear bankruptcy situation. Lear had moved before the bankruptcy court to enjoin all antitrust actions against it by reason of purported discharge that they got in bankruptcy. The matter was briefed and argued before bankruptcy Judge

Gropper. To the extent the motion related to --

THE COURT: What district?

MR. PERSKY: Southern District of New York, a bankruptcy judge. To the extent that the alleged unlawful conduct resulted in antitrust violations post discharge the Court allowed that matter to go forward and left it to the antitrust court to determine whether there has been sufficient pleading of an antitrust claim, and if it turns out that the antitrust claim is established what the scope of that liability is. Lear took an appeal to the District Court in the Southern District of New York. That has been fully briefed. So the issues under the bankruptcy laws as to whether or not we can move forward is sub judice.

So in my view to the extent that there are antitrust issues before Your Honor I would just think they would be common to the other defendants and any bankruptcy issues are currently before the District Court judge in the Southern District of New York who is hearing their appeal.

But, I mean, I don't want to make too much of a big deal over page limits, I thought Your Honor should be aware that the bankruptcy issues are currently sub judice.

THE COURT: Thank you.

MR. MAROVITZ: Your Honor, Andy Marovitz for Lear.

It is -- the complicated nature of the fact that there are issues being addressed in two separate courts shows

precisely why we need the page limits that we need and that we have asked for. It is not the case that all bankruptcy issues are simply going to the Southern District of New York and only antitrust issues will be here. Part of our motion to dismiss will be based upon bankruptcy issues that are not presented to the Southern District of New York either through Judge Gropper or through Judge Forest who now has the appeal. So I certainly don't want to argue with Mr. Persky on the merits of our position, that will be saved for the motion to dismiss, but in the end, of course, we are going to be the ones who present the arguments and I just want to put everyone on notice they will include the reasons under the bankruptcy laws that were not part of what has been presented to the Southern District of New York as to why this case should not and cannot go forward against Lear.

THE COURT: All right. The Court is going to allow for the common issues against each class -- I should say proposed class of plaintiffs, 40 pages with 15 pages for the reply. For all other individual defendant issues the Court is going to allow 20 pages with 10 pages for the reply.

And on the 40 pages I read 20 pages really well but when I get to 21, you know, so put your important stuff in the beginning, okay?

Then I think we are getting to the discovery plan issue. Does anybody have anything else before we get to the

discovery plan? Okay. Who is going to argue?

MR. SPECTOR: Good morning, Your Honor. Eugene Spector for the direct purchase plaintiffs. I'm going to be dealing on behalf of our group with the document question, the Grand Jury documents.

THE COURT: Okay.

MR. SPECTOR: We have managed to reach an agreement with the defendants to produce the documents that were produced to the Department of Justice in connection with the Grand Jury investigation, the subpoenas, search warrants. That's great progress.

We have been advised that of those millions of documents most of them are in Japanese, which is a difficult issue, especially me who doesn't speak Japanese or read it, but for all the plaintiffs' lawyers in this case. And so we wanted some kind of guidance or road map or descriptions of what is there so we would understand what is being produced to us, who the custodians were, where the documents came from, a description of what kind of documents they are, the subject matters maybe, and e-mails, correspondence, so we would at least have some kind of understanding and be able to try to organize this a little more efficiently and make it move more quickly and be less costly ultimately for us.

THE COURT: You are going to get the source and the custodian information, according to the document I have.

MR. SPECTOR: Yes, but most of that, Your Honor, is going to be in the metadata that is on the documents which will be in Japanese, some of it will be in English but most of it in coming out will be in Japanese.

THE COURT: I'm not understanding. Are you saying because this is Japanese you need more information, or are you saying you need a translation?

MR. SPECTOR: No -- well, a little bit different. What we are saying is that we would like some guidance as to what is there so that when we start looking at it we know what we are getting. Actually we are not asking for a lot more than what the Justice Department asks for when it requires the submissions to be made.

THE COURT: But you're not the Justice Department, and that's exactly the issue here.

MR. SPECTOR: I understand that, but they have already done this, Your Honor, and that's why we thought it made sense that if they already have got it done why can't we have it? And what they do is when they submit their data in their database there is a letter that is submitted with each submission who says who the custodians are that are included, the total number of records, the number of records for each custodian, and then the Bates range numbers for those custodians. That kind of information would be helpful to us as well, and I think we should be able to get that without

having to run the metadata on each of the data sources that were provided, just as the Justice Department gets it.

THE COURT: So you are saying custodians, total number of records?

MR. SPECTOR: Number of records per custodian and the Bates range number -- or the Bates number ranges, I'm sorry, of that. And we thought some sort of a description that tells us what is there, e-mail, correspondence, memos, that kind of thing.

There is one other issue that has arisen in connection with this, Your Honor, and that is we have come to understand that there are a number of translations that have been provided to the Justice Department, English translations, both certified translations and uncertified translations, and we believe that that should be part of what is produced to us as well.

THE COURT: That would make it a lot easier, wouldn't it?

MR. SPECTOR: Well, it would make things more efficient.

THE COURT: Yeah.

MR. SPECTOR: And it is already done, and the department -- we have been in touch with the department, Your Honor, as I have reported to you the last time, we try to stay in touch with the department so we don't interfere with

them and we want to make sure they don't think we are doing something that is going to interfere with them. We have asked them about these English translations, and they told us they have no objection to those being produced to us, it will not in any way interfere with the investigation being conducted by the department.

THE COURT: Okay. Can I hear a response on this?

MS. FISCHER: Thank you, Your Honor. Again, Michelle Fisher.

First, it may just be a misunderstanding, I cannot say that I know for a fact that most of the documents are in Japanese. It is a fair characterization to say that a number are Japanese perhaps, certainly many, I don't even know if I can say most for all defendants, but they are getting -- the plaintiffs are, indeed, getting most of the information that they asked for. They asked us to provide them with a letter identifying the fields that they would be getting. They are in load files. They are getting, for example, from Yazaki the custodian, the beginning Bates number, the ending Bates number.

THE COURT: Okay. Are they getting a list of custodians or do they have to look in metadata?

MS. FISCHER: It is in the fields that's provided, so it has a load file and it will tell you by document Bates range who the custodian of that document was and the company

from which it came, so they are getting the information. It seems to me what they are asking you for, Your Honor, is to provide that same information in multiple forms because it will save them time, on that issue that's what they are asking for. If the concern, Your Honor, is that some of the names might show up in the metadata as Japanese or some other language, we are certainly willing to provide them with a translation of this means Mr. Smith or Mr. Suzuki or whatever the case may be, we are certainly willing to do that.

THE COURT: What about the English translations?

MS. FISCHER: Your Honor, that first came up today, this morning, and if the Court wants to give that serious consideration we would certainly request a chance to brief about it but I'm prepared to talk about it.

THE COURT: Do you have English translations? The Department of Justice does.

MS. FISCHER: We have some English translations, yes. Basically we do not translate all documents, they are not certified, and to the extent they are provided to the Department of Justice they reflect sometimes quick responses, quick translations to respond to specific correspondence or specific requests with the Department of Justice which relates very directly to the Grand Jury proceedings, the nature, scope and direction of what they are looking at.

In essence, the plaintiffs have dropped their

request for the subpoenas, the search warrants and the correspondence acknowledging that they are not entitled without a showing of compelling necessity to documents that reflect the nature, scope and direction of the Grand Jury. This is just a backdoor attempt to get exactly that. If we describe what is in the documents it is a summary of what the DOJ was looking for. They want to know if it was e-mails, it is in the property field for Yazaki, it tells you if it is an e-mail or a memo or things of that sort.

THE COURT: Do you have any other document that says -- that you have already prepared that says, you know, these are e-mails, these are whatever?

MS. FISCHER: I don't believe so. I will check on that, Your Honor, but I don't -- I don't know that we have some sort of index. I think you just produce it with a load file which has the fields I'm referring to.

So I do think that intrudes on privilege and work-product issues to the extent that these translations are frankly reflecting value judgments made by the lawyers about what should and shouldn't be --

THE COURT: I'm not understanding that. To me a translation is what is in a document. What are you talking about?

MS. FISCHER: But they are not all translated.

THE COURT: Well, you don't have to translate what

is not translated but if you have translations --

MS. FISCHER: The translations would show those documents that we selected in response to discussions with the DOJ and the subpoena itself.

THE COURT: Okay.

MS. FISCHER: They are not all the documents.

THE COURT: Okay. Let me -- this is not difficult. You will give them the translations that you have. I'm not talking about some other third description like this like you're trying to give some extra detail or explain what was meant in this document, I'm not talking about that, but translations of any documents you are to turn over.

MS. FISCHER: I have a question, Your Honor.

THE COURT: Okay.

MS. FISCHER: There are two sets -- there are two types of translations, translations that we made for our own benefit and translations of documents produced to the DOJ. With respect to the documents produced to the DOJ, that clearly invades Grand Jury proceedings.

THE COURT: No, no, they get the translations, that's it. They get the translations. That's not invading the Grand Jury. They don't know what questions were asked to get those documents.

MS. FISCHER: To the extent that those translations were provided to the DOJ it shows exactly what the DOJ is

looking for and pursuing because we were making selective -- selections of which documents to translate, that's the point. I would only ask, Your Honor, since this just came up, this is a very important issue raising a lot of critical points, privilege and 6(e), and if the Court is inclined, as you seem to be, to seek -- to order us to do this, we would ask for an opportunity to brief this. This just came up this morning. We had reached an agreement to provide documents which they knew were produced to the DOJ pursuant to subpoena, not translations which are cooperation documents, not subpoena documents. This came out of the blue.

THE COURT: Mr. Spector?

MR. SPECTOR: Your Honor, we asked for all the documents that they produced to the Department of Justice. We learned that some of those documents -- and we learned recently that some of those documents were translations. Ms. Fischer is correct, I raised that issue with her this morning because I learned of it yesterday in our communications with the department, and I don't understand why anything produced to the department based upon the agreement that I thought we had wouldn't be produced to us including translations? And I don't see how that in any way invades the Grand Jury secrecy, it is a translation of a document we are getting.

THE COURT: Okay.

MS. FISCHER: May I make one more point?

THE COURT: You may.

MS. FISCHER: I can't speak for all defendants but in the case of Yazaki, translations were provided separate and apart from our actual productions. They do not bear Bates numbers in the same way that the production pursuant to the subpoena did. They are distinct categories of documents reflecting value judgments and specific communications with the DOJ. In essence they are asking for correspondence between us and the DOJ on issues that we discussed, and they are a unique set of documents very different from what we had agreed to produce. Thank you, Your Honor.

MR. PERSKY: May I just make one comment?

THE COURT: You may.

MR. PERSKY: My name is Bernard Persky. If the Department of Justice thought it interfered with Grand Jury secrecy they wouldn't have consented to its production in this case.

MS. FISCHER: Your Honor, I didn't have the phone call but our groups' view -- Steve --

MR. CHERRY: Your Honor, I think we should --

THE COURT: Could I have your name, please.

MR. CHERRY: I'm Steve Cherry. Would you like me to come to the podium?

THE COURT: Yes.

MR. CHERRY: Your Honor, I don't think any of us should speak for the Department of Justice today, they are not here. I have had conversations with them, I don't know that it is the most recent one, but I have fairly recently where they did express concerns about translations including the accuracy given the roughness, the uncertified nature that these things will be produced and then they start being important documents in a litigation where that is not the purpose they were created for. And I think if we are going --

THE COURT: But I am not understanding this, these are the same documents, we are not talking about separate documents, the same documents, but you have translated them and given them to the Government?

MR. CHERRY: Well, first of all, they are not certified, they are not -- they are rough translations often of portions of documents that you want to discuss with the DOJ at their request and you go in and you may talk about that portion of the document, you may find out in that discussion it is erroneously translated and --

THE COURT: Well, certainly plaintiff would take these translations at their peril, you know, and I'm assuming defendants did not deliberately miss -- and I don't think you are saying that, so they are taking it at their peril. No, I think these documents should be turned over. So the English

translations may be turned over. The Bates number ranges, any objection to turning over Bates number?

MS. FISCHER: Are you saying separate from the metadata, is that what you are saying?

THE COURT: Yeah, I'm not sure what that means.

MS. FISCHER: In other words, are you asking us to generate a specific report of the information they are already getting in the fields?

THE COURT: Mr. Spector?

MR. SPECTOR: If I might, Your Honor, it is our understanding that when you submit a disk of data of information to the Department you do it with a cover letter, the cover letter says on this disk are documents from Sam Smith, Bates range number X, Y, Z, and Sam Smith was an employee at such and such place, information along that line, just identifying as a locater and a custodian and a Bates range. That's the information we asked for as a separate idea so we would know what was on those data sources that we would be getting.

THE COURT: Let me ask, Ms. Fischer, if you would come to the podium.

MS. FISCHER: Yes.

THE COURT: Do you have such documents, are there letters that simply say this is what is on these disks?

MS. FISCHER: I'm not certain, I didn't handle

that. I think I can make a more general point, which is the case law says that -- and the Sixth Circuit and I believe -- the Sixth Circuit has said that even if you are producing Grand Jury documents themself you do not -- you do not have to produce an index to those documents because it would, quote, violate the concept of Grand Jury secrecies by allowing civil litigants to peer into the Grand Jury process.

In Re: Caremark, which is a Northern District of Illinois case, the same result, the court said the documents themself need be produced but they barred disclosure of the Grand Jury subpoenas and document indexes because they said they should not be compiled for the plaintiffs in the same manner that they were produced to the DOJ because that would disclose the working of the Grand Jury. It was exactly your point to Mr. Spector, they are not the DOJ, and so they are getting this information --

THE COURT: Okay. All right.

MR. SPECTOR: Just to be clear, Your Honor, we are not asking for an index, we are asking for a list of whose documents they are, Bates ranges, that kind of thing.

THE COURT: No, I don't think that's necessary. I think that you can get that from the information that you have, you can create your own, so I'm not going to order that turned over.

MR. SPECTOR: Thank you, Your Honor.

THE COURT: All right. The next issue, either the date range or the notification.

MR. HANSEL: Greg Hansel, again, Your Honor, for the direct purchaser plaintiffs. I would like to address the issue of document preservation.

We have had discussions with the defendants and we have tried to reach an agreement, we have been unable to reach an agreement as late as 9:45 this morning as those discussions have continued.

THE COURT: But if I have this right they are willing to give you until September, I forget now, the end of September to come up with -- to review records before you determine date preservation, and you want until the end of December?

MR. HANSEL: December 1, Your Honor, so we do expect under the agreement that the defendants who pled guilty be producing Grand Jury documents beginning on August 1st, primarily in Japanese, now, we are happy to have some translations of selected documents, and continuing to October 1, I believe, so we won't even have all of them until October. We will need some time, there are millions of pages of documents so that's why the plaintiffs are requesting until December 1 to agree -- to attempt to agree on preservation dates.

I would like to say a few words about the

importance of the preservation dates themself, if I may. As the Court is aware, in each of the three types of plaintiffs' consolidated amended complaint there is a class period. In the wire harness case the class period runs from 2000 to 2010. However, it is important for the plaintiffs to obtain documents from both before and after the class period because of important issues of liability and damages. The cartel may have started earlier, in fact, than the begin date according to the plea agreements between certain criminal defendants and the DOJ. Those plea agreements were subject to negotiation, the Department may have chosen to agree to certain dates in the interest of reaching a plea agreement. Those dates are not necessarily binding on the plaintiffs if we can demonstrate the cartel started earlier as we believe or if the effects lasted longer. Our investigation has suggested that some of these cartels may have begun in the 1980s in some parts of the world, and we don't want to bind ourselves to the DOJ's bracket dates.

So plaintiffs intend to show that there is liability for the full period of the cartel, whatever that is, but even outside of what we eventually determine to be the full cartel period, for purposes of damages we need to understand the state of affairs in the industry, the pricing in the industry before the cartel started and after the cartel ended.

Here is the reason: That for the plaintiffs to carry their burden to prove damages in this case we have retained a Ph.D. economist who will have to create a model of what a competitive market price would have been in this industry, in the wire harness industry, during the class period but for the cartel. So if there had not been a cartel what would the competitive price have been if bids weren't rigged and prices weren't fixed and the defendants were competing properly, would it -- by what measure would it have driven prices down to a competitive level? We call that the but-for world.

Many economists will say that the best evidence of the but-for world is prices before the cartel started or after the cartel ended. So we do need to go back before the cartel started, and we don't even know when it started yet. We also need to go look at data from after the cartel ended. Now, we all assume perhaps that the cartel conduct would have ended when the FBI raided companies and the Japanese Fair Trade Commission and European Commission raided these companies in dawn raids beginning in February of 2010. However, as all of the complaints plead, these contracts that were bid rigged were oftentimes five-year contracts so we know there may have been continuing effects. If a bid was rigged and a contract given to a supplier just before the raids that model car might not even have come into

manufacturing yet because as we know the requests for quotation, RFQ process, often began three years before the new model car started being manufactured. So for that reason we need documents after and data afterwards.

So I think I have gone on long enough about the importance of the issue and some of the nuances for purposes of liability and damages. I just want to say one last point about costs. The defendants assert that it will be expensive, even debilitating, for them to maintain old records. My understanding is that most of these records would be on digital backup tapes from the year 2000, 1999 era. And with the pace of change of technology the plaintiffs seriously doubt whether those tapes are even reusable now some 13 years later, and we frankly don't understand why it would cost the defendants anything to leave those backup tapes on the shelf.

THE COURT: Okay.

MR. HANSEL: Thank you, Your Honor.

THE COURT: Defense?

MR. TUBACK: Good morning, again, Your Honor. Michael Tuback for Leoni.

I think we need to separate out two things here. One is when we need to reach agreement on when the preservation date begins, what the beginning date is for preservation and what the end date is for preservation. I

think it is a fair point to say that the plaintiffs need time to figure out what the beginning point is of preservation. Of course, putting aside the issue of preservation is very different than production, but just to preserve the documents. We are not making the argument that it is burdensome or costly to preserve the old, whatever there may be out there, preserving documents from the 1990s or the early 2000s. Our argument is that for the end date there is no reason to pick anything other than the date shortly after the Grand Jury subpoenas were issued, there were public search warrants and dawn raids in Europe. And on that point the only thing that plaintiffs have said is there may be continuing effects of conduct prior to those raids that would be reflected in the prices.

We have already agreed to preserve the transactional data that we would be required to do anyway as businesses that are growing concerns, we have already agreed to preserve the transactional data that postdates the Grand Jury subpoenas and the search warrants. What we don't want to have to do and what we should not be required to do is re-image computers that we have already imaged, undergo a whole new preservation process that we have already done. Let me explain what I mean by that.

THE COURT: Wait a minute. We are talking end dates here now from 2010, so you are talking 2011, 2012 so

far that you --

MR. TUBACK: Right, and our proposal, Your Honor, is that we would end our preservation obligations as of June 2010 is what we should do. We have, in negotiations with the plaintiffs, have taken different positions to try to reach compromises but the right result here is we end our preservation obligations in June of 2010 with the exception of transactional documents, documents -- data, transactional data that will tell them what the prices were for products past that time. They have given us no reason why we should do anything after we did our initial preservation that came as a result of the Grand Jury subpoenas. Let me explain what I mean by that.

THE COURT: Wait a minute. Are you saying because the Grand Jury subpoena was issued on this date everybody would have stopped whatever corrupt action they would have been involved in, if any?

MR. TUBACK: That exact --

THE COURT: Because they wouldn't be stupid enough to continue after the Grand Jury has -- they got the subpoena, is that what you are saying?

MR. TUBACK: I might phrase it differently but that's certainly one way to phrase it, but beyond that, Your Honor --

THE COURT: I think I have done a lot more criminal

law than you have.

MR. TUBACK: I was an assistant U.S. attorney for a number of years.

THE COURT: Judge, do you ever see people go on? Sure.

MR. TUBACK: I don't want to get into the relative stupidity of anyone here, but what I do want to say is in our experience, and I have done a fair number of these, and I will say I was an assistant U.S. attorney for a number of years, the preservation obligations -- let me just explain how these cases work. When a company gets a Grand Jury subpoena one of the first things we do is go out and preserve documents. So one thing that will include, for instance, is going to the custodians that we think may have responsive documents and imaging those computers or making copies of everything they have. And you do that shortly after the Grand jury subpoena is issued. Why, because you want to make sure you're preserving the documents that need to be preserved for the Grand Jury subpoena. That's a very expensive, time-consuming process, and there is no reason to make us -- unless they can proffer some reason, there is no reason to make us go back to those same custodians, image the same computers all over again so that they can capture not transactional data, because they will get that already, but to capture e-mails that are several weeks or so after the

Grand Jury subpoenas are issued, and today that's a very expensive process.

THE COURT: So what are you -- what have you done to capture this data from the Grand Jury date to today's date? You still have that, those images?

MR. TUBACK: You are talking about transaction -- yeah, of course.

THE COURT: Not transactional.

MR. TUBACK: Of course we have kept the images, yes, absolutely. We have document holds in place that have been put in place since the Grand Jury subpoenas were issued. The question is do we need to go back now and make a second effort to redo basically everything we did when we got the Grand Jury subpoenas?

THE COURT: Okay. Thank you.

MR. TUBACK: Thank you.

THE COURT: You know, I can't even imagine how you do all of this but anyway --

MR. TUBACK: Believe me, it is a lot.

THE COURT: -- assuming you do it.

Go ahead.

MR. HANSEL: Thank you, Your Honor. Briefly in reply, the reason we need liability documents, not just transactional data, at the end of the cartel is twofold. Number one, if a defendant changes its conduct after they are

busted and now they are acting in a different way, a competitive way, that in itself is important evidence of how they were acting in a cartel beforehand, that changed, that new conduct. So suddenly they actually have to compete how do they go about deciding their prices internally that they are going to charge or the responses that they are going to make to an RFQ? They will have a whole new analysis perhaps because they are not meeting with their competitors anymore to fix the prices and rig the bids. That new analysis, the fact that they go through it at all, how they do it, is evidence that they were competing -- they were engaging in a cartel beforehand.

THE COURT: So you are assuming the other, they are not continuing with their, quote/unquote, corrupt behavior, they are in fact doing it right and now you want to say here you have done it right and so --

MR. HANSEL: This is what it looks like and you can contrast that with what they were doing before just meeting with the competition. Now, in some cases the second --

THE COURT: It is like they are damned if they do and they are damned if they don't, isn't it?

MR. HANSEL: In some cases there have been cases where the defendants did continue the conspiratorial conduct, and one example of that was a case called Graphite Electrodes, and in that case there was evidence that the

defendants even after the investigation began they continued to secretly fix prices.

THE COURT: Let me ask you this, what are you looking for to determine how long they should have to keep this data, in your opinion?

MR. HANSEL: Well, we think as a practical matter the plaintiffs' ability to review the Grand Jury documents that the defendants have already agreed to produce starting in August, our ability to review those quickly will enable us to negotiate a reasonable set of bracket dates, beginning and end, by December 1st.

THE COURT: Okay.

MR. HANSEL: Thank you.

MR. TUBACK: I'm sorry, Your Honor. These Grand Jury subpoenas were issued in February of -- starting in February of 2010, and what I have just heard the plaintiffs say is that they want until December 2012 to decide when we can cut off our preservation obligations. That's just not reasonable. It is not surprising to me that plaintiffs' counsel have set up a syllogism whereby if we continue to conspire they get the documents and if we didn't continue to conspire they get the documents. This is a burden issue, and the question is is there any good reason to make us go back and do what we have already done and spent a lot of money and time doing because they want to rummage around to see if they

can come up with some other argument. It is not the way -- the fact that they can come up with one example where it may have happened in the past, that may or may not be the case but what I can tell the Court in the absence of any evidence that it has happened we shouldn't be required to go back and redo all of our work again. It is really expensive.

THE COURT: Okay. Well, you have agreed to wait until September 1st.

MR. TUBACK: September 1st, Your Honor, what I said in the beginning is we wanted to wait until September 1st for the beginning date. I can see the argument on the beginning date, to pick the date beyond which we don't have to keep documents or before which we don't have to keep documents. I might pick an earlier date, but if they wanted until then I can live with that. What I think we should get is an earlier date for when the preservation obligations end so that we know we can go back to our clients and say okay, we have done what we need to do to preserve the documents that are relevant to this case potentially, and we don't have to keep going on and on and on to preserve these documents.

THE COURT: Okay. It would seem to me that plaintiff should have some time to review these documents that they are getting that were submitted to the DOJ before we make this determination. I don't think you need until December 1st but let me give you until mid October, say

October 15th, to make a determination of what the dates will actually be.

MR. HANSEL: Thank you, Your Honor.

MR. KANNER: Your Honor, if I may, Steve Kanner.

The tail end of the document production for the defendants of the Grand Jury materials, it begins in August but it doesn't end until the 16th of October, and as these things happen it is oftentimes that you get a pile of hundreds of thousands or perhaps more documents on October 12th, so we may not have had a chance --

THE COURT: All right, October 30th, and you will have to work really hard.

MR. KANNER: We will work fast. Thank you, Your Honor.

MR. TUBACK: Your Honor, the October 30th date, just to be clear, is a date where we are supposed to meet and confer and try to reach resolution?

THE COURT: Correct.

MR. TUBACK: The plaintiffs aren't dictating to us what our preservation obligations are?

THE COURT: Absolutely not.

MR. TUBACK: And if we have a disagreement we will come back to the Court?

THE COURT: You will be here.

MR. TUBACK: Thank you.

THE COURT: I think if you have a disagreement you could file a motion and the Court will hear it forthwith because I don't think this is going to be complicated but who knows, it could be, I don't think so.

Now, we have an issue of depositions and confidential documents.

MR. KOHN: Thank you, Your Honor. Again, Joseph Kohn for direct purchasers and all plaintiffs with respect to the protective order issues.

Your Honor, there is one disputed issue, which is the use of so-called highly-confidential documents at a deposition. The plaintiffs' position is there need not be a prior seven-day notice of a document that would be presented at such a deposition. Now, we have compromised on many issues on the discovery program, we compromised on a lot of issues in the confidentiality order, we compromised on a lot of issues revolving around the depositions under the confidentiality order. Why can't we compromise on this? I think there is really two groups of reasons, one you would call principle and the others are practicality.

By the time we get to the depositions of these witnesses after all of these motions, after the review and translations of documents, I mean, this is really the core of the trial preparation in the case. I mean, very few cases like this with foreign defendants or defendants spread around

the country result in testimony from live witnesses at trial. It is really the deposition testimony that becomes the trial testimony by videotape, by reading, et cetera.

THE COURT: Boring.

MR. KOHN: It can be, which our task is to try to keep that interesting for a jury.

These witnesses are being deposed as on cross-examination. We are calling a defense witness as on cross, yes, there is discovery issues, we may not know who wrote a handwritten document and we are asking questions about that sort of thing, we may want some background, but it really is the crux. On the principle item there are two problems, one is giving your opponents advance notice of your planned cross-examination right down to the specific exhibits you are going to use. It just is not proper trial under our system. The second, and to me really the more important one, is if there is a failure for some reason to predesignate a particular document that at the deposition you want to use the result is you are barred from presenting that piece of evidence to a witness. In other words, you may have an otherwise admissible piece of evidence, a memorandum from a defendant that is an admission, or it is a business record or it is a co-conspirator statement, and a witness may be saying something that you either did or didn't anticipate, and now you can't present that document at that point in the trial,

you can't have it displayed to the jury that this witness claims no knowledge of some meeting that, you know, you think he or she may have attended. There are credibility issues that come up, large and small, where some document may in the flow of our cross-examination and our trial presentation we would want to be able to show those documents.

Now, yes, we prepare ahead of time but you prepare your questions ahead of time but unfortunately you don't know what the answers are going to be. And it, again, might be a document that in a trial with a live witness you would want to pull out and say, Mr. Witness, you just said something, haven't you seen Exhibits Number 2, 3 and 4 which are evidence in this case, and don't they cause you to either reconsider your testimony, or doesn't that refresh your recollection about this or that?

So, you know, we have seen other orders, I know we did cite the order in the matter before Judge Borman in Packaged Ice as how it was a negotiated, agreed-upon order, it was not -- it didn't involve a ruling by Judge Borman, but in that case there were -- there was no pre-notice about deposition -- showing highly-confidential documents to deposition witnesses.

There are, as I say, some restrictions on the use. I mean, we are proceeding in good faith and we do agree to certain restrictions on the use of highly-confidential

documents at depositions. We just don't agree with the pre-notice. If I had my druthers it would simply say we can show any confidential and any highly-confidential document to any witness at a deposition for any reason we choose, but we didn't have that, we do have some stricters on it with respect to impeachment, et cetera.

Now, on the practical side what we have found in cases, despite the notion of highly-confidential documents, many, many pieces of paper come with that legend on them after they are produced. We are not talking about the seven pieces of paper that have some sort of secret formula, so that leads to a couple of things if we have one of these procedures of having to prenotify people about depositions. Sometimes there may simply be an oversight of a document; you provided the list and, oh, shucks, we forgot to put these ten documents which we may want to use and now we are barred, or you have over designation so the week before the deposition make sure you list every single highly-confidential document that we might conceivably want to use so you have to make sure you're complying with your notice provision.

I mean, the other practical issue is what happens once there is dispute? Let's say we do predesignate some documents, the defense says oh, no, I don't want you to show that document to the witness. Are we going to be running to the Court or to the magistrate on I want to show a specific

document to a specific witness in a deposition? These are documents that have already been produced, they are the defendants' documents. Sometimes we have been in cases where the depositions are proceeding along on track and our colleagues, Mr. Persky is taking a deposition, and three days later I have a deposition, and we get a notice there is a really interesting document we hadn't focused on it before but so-and-so just testified about this document, so you ought to ask the witness you are taking in three days about it. Too late, it wasn't on my list that I had to submit. Now, I mean, that may be an absurd example but those are the kinds of practicalities that do come out.

So the order as drafted, other than this witness provision, has all sorts of protections which we think should stay in place. We are not saying that highly-confidential documents should no longer be confidential. Paragraph one says all the information is used solely for the litigation. Paragraph 8-A, in no event may information be used for any business or competitive purpose. The witnesses must be told of the confidentiality order, shown the confidentiality order, requested to sign an attachment to keep it confidential. If they don't agree it is read into the record. The deposition itself, the transcript, is confidential, for 30 days the entire transcript is kept under wraps. The witnesses don't walk out of the room with these

documents.

And I think the concerns here really this is not a case where the plaintiffs are Pepsi and the defendants are Coke and we are trying to get in and see their secrets. This is a case where -- the irony of sort of the confidentiality issue where -- the contention is there were improper communications and disclosure of confidential information between and among the defendants, and it would be the defense witnesses, one defendant having an issue with another defendant's witnesses about this disclosure, so I think within the strictures of the confidentiality order they can police that and police their own witnesses and bring home the importance of the confidentiality agreement and it shouldn't hinder the plaintiffs' preparation of our trial.

THE COURT: Okay. Let's see what defense has to say about that.

MR. KOHN: Thank you, Your Honor.

MR. MAROVITZ: Good morning, Your Honor. Andy Marovitz, again, for Lear.

There are actually three, not just one, but three narrow but very important disputes between the plaintiffs and the defendants about the handling of the parties most competitive, competitively-sensitive, highly-confidential documents that are at issue. I agree with Mr. Kohn that we made tremendous progress with everything else.

The key difference here that I want to focus my remarks on that plaintiffs do not focus on is we are not talking about all highly-confidential documents, we are talking about highly-confidential documents that would be shown in depositions to people who have never before seen those documents. That's why we need to have certain protections in place. That's why frankly with respect to each of these three fundamental differences the defendants approach is faithful to the protective order which does not presume, despite what Mr. Kohn remarked as the irony of the situation, that defendants are guilty of any crime.

First -- the first of the three points is can a lawyer show a highly-confidential document to, again, consider the recipient, a competitor, a customer or direct seller who has never before seen the document without first notifying the producing party so that it can at least evaluate whether it should take some precautionary steps to protect its commercial secrets? That's one, and I'm going to talk about that in a minute.

Second, in addition to all the people who have previously seen the document who are covered by other parts of the protective order, can the plaintiffs show highly-confidential documents, again, to people who have never before seen its contents and who aren't even familiar with its contents if the witness is a former employee, if the

document is used for refreshment purposes or if the document is being used to impeach, again, when the witness has never before seen the document and is not knowledgeable about its contents?

And third, can the plaintiffs show highly-confidential information to a person who did not author it or receive it if the lawyer doesn't even have reason to believe that the person is knowledgeable about the specific events referenced in the document instead of some industry fact that is more general in nature?

Those are the three disputes, and they are all put forth in our brief. Before I go one, two, three on those I want to remark about one important point that is not contained in the plaintiffs' brief but was given some prominence today, and that's the what happens if we miss one, are we barred from using it at the deposition? I assure you for Lear and probably for the other defendants as well that we are going to exhibit the same degree of professionalism that we have, that everyone's conceded that everyone has exhibited throughout the proceedings thus far if that occurs. So we will take a fair look and we will try to figure out whether it is appropriate or inappropriate, so there won't be some automatic bar, it is just that they would have to show it to us at the deposition if they want to show it to a witness who has never before seen it.

So let me talk about each of those three points because they are really important. First, again, it is the recipient that matters. This is not some parade of horribles where all highly-confidential documents are subject to this. Why would a lawyer show a company's internal, highly-confidential documents in litigation to a competitor, a customer or a direct seller who has never before seen it? The answer must be if the attorney believes that that person has knowledge of its contents despite the fact he hasn't seen it before. That's possible under certain circumstances, no doubt, but there is a huge and certain risk to the parties of transmitting highly-confidential information from that witness who wrote the document in the first instance to the witness who is seeing the document now in the second.

And the fact is that even when you have a protective order the most well-meaning witness who signs the protective order can't somehow forget what he's seen, he has seen it, and if he continues to have some role in the industry he's knowledgeable, and that would be frightening to us and to my client if, in fact, he is shown something that is commercially sensitive. Imagine, for instance, if plaintiffs want to show highly-confidential technological or cost information to a competitor who has never seen it before.

Defendants' paragraph 10-C balances these issues by

on the one hand giving notice and opportunity, it doesn't bar the plaintiffs from doing this, but it gives notice and opportunity for the document to be seen and for the lawyer to evaluate whether the risks are too high, and then if we can't reach agreement to bring it to Your Honor. I am sure that all parties are going to make judicious use of that procedure. Nobody wants to bug the Court unless it is really necessary, but this fact is even more important now that we may have these other cases coming in and the notion that other people may at some point in the future be part of this. So that's point one.

Point two is, again, in addition to people who have previously seen the document, the plaintiffs' version of their protective order, which was not commented on in oral argument but is part of their version that was submitted to you, allows highly-confidential documents to be shown to witnesses who have never before seen it and who are not thought to reasonably know the contents for purposes of refreshment or impeachment or if the witness was a former employee of the party that saw -- that produced the document. This is what we on the defense side call the except that swallows the complete rule because if the plaintiffs, or anybody frankly, can make use of that provision, it is Katy, bar the door, there is no protection at all.

We asked the plaintiffs in the meet and confer to

identify a situation where you would impeach a witness with a document that they haven't received, that they haven't authored and they are not thought to know its contents, and they could offer us no example and there is none in their brief, so this is one that is really again important frankly to us and it ought to be important to everybody.

The third and final point that I raised before is can plaintiff show highly-confidential documents to a person who didn't author it and didn't receive it if the lawyer doesn't have some reason to believe that that witness is knowledgeable about the specific things that are mentioned in the document? Our draft says it has to be specific, the plaintiffs' draft says it doesn't have to be specific, and we are very concerned about that because we are very concerned about whether or not some generalized industry fact could be used as a hoist in order to show people documents, again, they have then seen before and that are highly confidential under the terms of the protective order.

To conclude, Judge, discovery in litigation is -- it is remarkable in some sense, it permits lawyers and sometimes witnesses to see a party's most competitively-sensitive documents, and here we have a reasonable, negotiated -- everybody negotiated in good faith -- protective order to protect against misuse, but there are limits to what a protective order can do, and the

plaintiffs' positions on all of this would seriously jeopardize the value of confidential, proprietary information to each of these parties as they try to continue to earn business in the marketplace.

The final thing that I would say on this is it was told to me that one of the first things that Judge Borman asked when entering the Ice stipulated protective order is why do you need a protective order in the first place, are you trying to protect the secret formula for ice? This case is not about ice, this case is about highly-sensitive information that needs protection.

THE COURT: Okay.

MR. KOHN: If I may very briefly, we were counsel for plaintiffs in Ice, and despite Judge Borman's admonition there were a lot of highly-confidential documents in that case, so the principle --

THE COURT: Not on how to make ice?

MR. KOHN: -- the principle, does it relate to your customer list, doesn't relate to your internal costs, that concept of highly confidential applies despite the different process.

Very briefly just to respond to the notions of -- the examples that counsel has cited. The defendants' proposal, it is in their paragraph 10-C, is that any employee of a competitor who is not either the author or recipient of

the document must receive advance notice. The problem we have with that are a few quick examples. Company A has a document, it is the notes or memos of a conspiratorial meeting, it was not given to the witness at company B, he was not a recipient, he was not the author. Company B witness doesn't remember or categorically denies such a meeting. That piece of evidence we believe can properly be shown to that witness without advance notice.

Company A writes a memo to their boss, I reached agreement with witness X at company B to rig the bids to the manufacturers. He's not an author or a recipient. That document would require the advance notice.

There might simply be the bid that was submitted by a particular company, that's confidential. Company B's witness didn't author it, didn't receive it, but we want to show that company B's bid was deliberately askew from the company A bid and we want to match the two of them up, we would have to give them that ahead of time.

The whole notion that a witness has, quote, never seen the document before, why would you ask them that? Well, first of all, how do we know they have never seen the document before until we ask them? These are now the depositions. So they sort of have that rabbit in the hat with the whole notion of what we have to give them advance notice of it.

We know if they are listed as an author or recipient, but we don't know that they passed out documents at a meeting and then took them back after a bid rigging meeting. We have seen that in cases. The documents, you know, it is not like a memorandum from the company boss to the field offices, these are by definition the conspiratorial documents.

As to the technical cost information, Your Honor, frequently what you see is a lot of this is from ancient history. We are in 2012, these depositions may begin in 2013, 2014, about conduct that occurred in 2005, 2006, 2007. I mean, despite these concerns about confidential cost information, confidential technical information, there is really very little of it when you get to the end of day, it is ancient history by that time. The costs and the bids were communicated to the third parties, to the victims of the conspiracy.

The automobile can be reverse engineered and broken apart and looked at, the other folks can see what the wire harness of -- you know, Sumitomo can see what Yazaki's wire harness looks like, they know it. So I think, again, we are not dealing with the Coca-Cola secret formula or maybe dealing with a little more than the Ice secret formula, but we think given all the other protections in the order, given the additional good faith that we said we are not going to

show any document to any witness willy-nilly, it will have to be for impeachment or for refreshment or that they are referenced in some way as a subject matter that refers to a meeting or that sort of thing, we think that is more than adequate protection and we do believe the advance notice is just an unworkable and an improper restriction on the preparation of the case. Thank you.

THE COURT: Briefly.

MR. MAROVITZ: Yes, Your Honor. Three very brief points, Your Honor.

First, third parties, non-parties to this litigation, including our customers, have an interest in the way that certain of our internal documents are being used, and if there is no notice given to them or given to us and we have the ability to give it to them they will not be heard before their information is used.

Second, I would urge the Court to look carefully at the different versions that were given by the plaintiffs and the defendants. These are certainly by definition, the oral argument we are having is more thematic, but if the Court looks carefully at those two different versions it will see that the defendants' version is far more careful. What I mean by that is, for instance, the critical point to remember in all of this is what we are asking for is not a bar, we are simply asking for notice if in the event if the witness is a

competitor, a customer or a direct seller, and that is the key point that really distinguishes the plaintiffs from the defendants here. These are not documents going to people that have seen them before or who know what is in there. It is not only people who haven't seen them before or don't know what is in there, but it is people who could affirmatively use competitive information to the disadvantage of the company that produced it and is keeping it secret.

What I would say, Judge, is finally once the bell is rung it can't be unrung.

MR. KOHN: Your Honor, if I may briefly, and to show it is brief I will stay at counsel table if that's appropriate?

THE COURT: That's fine.

MR. KOHN: The first point as to a concern about a customer's document or some third-party's document that they may have I don't quite understand. I think what they are saying is there's some document marked highly confidential that they then want to tell some third party who is not even subject to the confidentiality order about to sort of just pre-discuss, you know, the use of the document in a confidential deposition.

Finally, Your Honor, the pre-notice as where we begin in trial preparation, there is a spontaneity about asking a witness on cross-examination about a document, and

we just don't think it is appropriate to have an opportunity to rehearse even as to a document that you didn't see before, now you do get a chance to see it a week before your deposition and have your answers prepared for it. We just don't think that's proper in cross-examination.

THE COURT: I agree. I don't think the documents should be shown before the deposition. I think if they are marked highly confidential all attorneys will respect that. Yes, once the bell is rung it has been rung, but I guess that's always a danger in litigation. It seems to me that you have enough built in to secure the confidentiality of the documents. It is not of a nature of the Coca-Cola trade secret where somebody can look at it and get a recipe. We are not talking about trade secrets here. I agree that much of the highly confidential would probably be ancient history but not necessarily all of it, and I can certainly understand plaintiffs' concern about some of this information coming out, but I think there are too many -- there are more risks with having the seven-day notice than not, and I think that the spontaneity of the witness's response is perhaps the critical point.

Certainly counsel at deposition can see the document before the witness is shown the document, so we will put that in that counsel will see it first, and then if counsel has some objection I guess you make your objection at

that point and it will be preserved for the Court's ruling.

Okay. I think that takes care of all of the issues in the plan and protective order, so we have covered all of these items. I'm going to ask counsel, plaintiffs and defendants, to get together to submit orders that are consistent with what we did here today.

I know from your papers that you were talking about another conference after the motions are resolved. I don't want to wait quite that long. I think we need to just see to it administratively that things are moving along and that we don't have any great delay. So my suggestion would be this, I know defendants don't have designated counsel except for what we did today about the IT, but you may want to -- you are certainly all welcome to come, but you may want to get together and have a few of you come. I just want to have a status conference, I'm thinking, and I will send out notice of this, I'm thinking of November because then everything would have been filed though not heard or ruled on or anything else, but we would have all of the briefing in just to see that we are all on the same page.

I'm only requiring liaison counsel to come so that you don't all have to come from wherever. Obviously I will send out notice and whoever wants to come can, but what I'm trying to tell you is you don't all have to show up. This is just so we can make sure -- I can feel confident that the

case is moving along as scheduled. So we will submit probably sometime in October the date for the November meeting.

MR. ALTERMAN: Your Honor, would it be possible for --

THE COURT: Could you give your name?

MR. ALTERMAN: Irwin Alterman. Would it be possible for some people to participate by telephone or is that too cumbersome?

THE COURT: Well, ordinarily I do a lot by telephone but with the number of people here I think we would be getting everybody wanting to participate by telephone and I'm not going to go there at this point.

MR. TUBACK: Just one quick question, the Court indicated it was going to set a hearing date for November in October, if the Court can do so --

THE COURT: Oh, no, no, a hearing date?

MR. TUBACK: The next status conference date.

THE COURT: Right.

MR. TUBACK: If the Court could set the November date as early as possible so we can block off our calendar that would be very useful?

THE COURT: Okay. I mean, I have nothing scheduled for November -- I do have trials, I do have some big trials, but we will do it as soon as possible. Thank you.

Before we close is there anything else? I want to say I'm really impressed with how you are cooperating and how organized and obviously your experience comes through so well. I appreciate it. It is really a good opportunity for me to deal with excellent counsel in a very fascinating case, so I thank you. Good luck. All right.

THE CASE MANAGER: All rise. Court is adjourned.

(Proceedings concluded at 11:59 a.m.)

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CERTIFICATION

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of In Re: Automotive Parts Antitrust Litigation, Case No. 12-MDL-2311, on Friday, June 15, 2012.

s/Robert L. Smith
Robert L. Smith, RPR, CSR 5098
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: 07/10/2012

Detroit, Michigan